RECENT AMERICAN DECISIONS.

Supreme Court of the United States.

INHABITANTS OF THE TOWNSHIP OF BERNARDS

v.

MORRISON ET AL.

1. As against *bona fide* holders of municipal bonds, which recite that they are issued in pursuance of a certain Act of the legislature which authorizes certain commissioners to borrow money on the faith and credit of the town, and execute bonds thereof, after a majority of the tax-payers had assented thereto, which fact should be proved by the affidavit of the town assessor, the defenses that the consent of a majority of the tax-payers was not given; that the affidavit of the assessor to that effect was not true; and that the commissioners did not borrow money on the bonds, but disposed of them without lawful consideration, are not availing.

2. The fact that the commissioners were special officers appointed for the purpose of issuing the bonds, by the Court, under the Act of the legislature, does not make their acts any less binding on the town. It is sufficient that full control was given them in the matter.

In error to the Circuit Court of the United States for the District of New Jersey.

A. A. Clark and *James R. English*, for plaintiff in error.

Courtlandt Parker, for defendants in error.

BREWER, J., March 3, 1890. This is an action on township bonds. Judgment was rendered against the township, and it alleges error. The bonds were issued under an Act approved April 9th, 1868, and found in the Sessions Laws of New Jersey for that year (page 915 *et seq.*). Outside of the obligatory words, this was the form of the bond:

"This bond is one of a series of like tenor, amounting in the whole to the sum of one hundred and twenty-seven thousand dollars, issued on the faith and credit of said Township in pursuance of an Act entitled "An Act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868. In testimony whereof, the undersigned, Commissioners of the said township of Bernards, in the County of Somerset, to carry into effect the purposes and provisions of the said Act, duly appointed, commissioned, and sworn, have hereunto set

our hands and seals the 1st day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

JOHN H. ANDERSON, (L. S.)
JOHN GUERIN, (L. S.)
OLIVER R. STEELE, (L. S.)
Commissioners.

Registered in the County Clerk's office.

WILLIAM ROSS, JR.,
County Clerk."

The first section of the Act provides that, upon the application in writing of twelve or more resident freeholders, the Circuit Court of the county shall appoint three resident freeholders to be Commissioners. Section two reads as follows:

That it shall be lawful for said Commissioners to borrow, on the faith and credit of their respective townships, such sums of money, not exceeding ten per centum of the valuation of the real estate and landed property of such township, to be ascertained by the assessment rolls thereof, respectively, for the year eighteen hundred and sixty-seven, for a term not exceeding twenty-five years, at a rate of interest not exceeding seven per centum per annum, payable semi-annually, and to execute bonds therefor under their hands and seals respectively; the bonds so to be executed may be in such sums, and payable at such times and places, as the said Commissioners and their successors may deem expedient; but no such debt shall be contracted or bonds issued by said Commissioners, of or for either of said townships, until the written consent shall have been obtained of the majority of the tax-payers of such township, or their legal representatives, appearing upon the last assessment roll, as shall represent a majority of the landed property of such township (including lands owned by non-residents) appearing upon the last assessment roll of such township; such consent shall state the amount of money authorized to be raised in such township, and that the same is to be invested in the stock of the said railroad company, and the signatures shall be proved by one or more of the Commissioners. The fact that the persons signing such consent are a majority of the tax-payers of such township, and represent a majority of the real property of such township, shall be proved by the affidavit of the assessor of such township endorsed upon, or annexed to such written consent, and the assessor of such township is hereby required to perform such service. Such consent and affidavit shall be filed in the office of the clerk of the county in which such township is situated, and a certified copy thereof in the town-clerk's office of such township, and the same, or a certified copy thereof, shall be evidence of the facts therein contained, and received as evidence in any court of this State, and before any judge or justice thereof.

By Section three these Commissioners were authorized to dispose of the bonds, and invest the money in railroad stock

in the name of the township, to subscribe for and purchase stock in the railroad company, and to act at stockholders' meetings. Section fourteen provides—

> That all bonds issued in accordance with the provisions of this Act shall be registered in the office of the county clerk of the county in which the township is situated issuing the same, and the words "Registered in the County Clerk's office" shall be printed or written across the face of each bond, attested by the signature of the county clerk when so registered, and no bond shall be valid unless so registered.

It is conceded that the Commissioners were duly appointed; that the issue of bonds was not in excess of the amount authorized by the statute; that a paper purporting to contain the consent of the requisite number of tax-payers, duly verified by the affidavit of the township assessor, was filed in the office of the clerk of the county; and that the plaintiffs were *bona fide* holders. But the contention is, that the consent roll did not in fact contain the requisite number of tax-payers, and that the affidavit of the assessor was not true; also that the Commissioners did not borrow any money on the bonds, but disposed of them without lawful consideration. The Circuit Court held, that these defenses were unavailing against *bona fide* holders of the bonds; and with that ruling we concur. Indeed, all the questions which were earnestly presented and argued by counsel for plaintiffs in error have been often considered and decided by this Court. The Act gave the Commissioners power, under certain conditions, to issue the bonds. The recitals therein show that they were issued in pursuance of the Act, and the bonds were all duly registered as required. The case of *Montclair Twp.* v. *Ramsdell* (1883), 107 U. S. 147, 158, was a suit on bonds in form like the ones in suit, and issued under a statute practically identical. The validity of those bonds was sustained; and in the course of his opinion, speaking for the Court, Mr. JUSTICE HARLAN says—

> Legislative authority for an issue of bonds being established by reference to the statute, and the bonds reciting that they were issued in pursuance of the statute, the utmost which plaintiff was bound to show, to entitle him, *prima facie*, to judgment, was the due appointment of the commissioners, and the execution by them in fact, of the bonds. It was not necessary that he should, in the first instance, prove either, that he paid value, or that the conditions preliminary to the exercise by the com-

missioners of the authority conferred by statute were, in fact, performed before the bonds were issued. The one was presumed from the possession of the bonds; and the other was established by the statute authorizing an issue of bonds, and by proof of the due appointment of the commissioners, and their execution of the bonds, with recitals of compliance with the statute.

See, also, the cases of *Bernards Twp.* v. *Stebbins* (1883), 109 U. S. 341, and *New Providence* v. *Halsey* (1886), 117 Id. 336, in which bonds, issued either under the Act before us, or that referred to in 107 U. S. (*supra*), were considered by the Court. Reference also may be made to two New Jersey cases, *Cotton* v. *New Providence* (1885), 47 N. J. Law, 401; *Mutual Benefit Life Ins. Co.* v. *Elizabeth* (1880), 42 Id. 235. It were useless to refer to the long list of cases in which recitals like these have been held sufficient to sustain bonds in the hands of *bona fide* holders. It is urged that these commissioners were not elected by the people; that they were not the general officers of the township, but were special officers appointed by the Circuit Court, special agents as it were, for the specific purpose; that the statute does not in terms give them authority to determine whether the preliminary conditions have been complied with; and that this case is therefore to be distinguished in these respects from those cases where similar recitals have been held conclusive. But though not the ordinary officers of the township, they were the ones to whom by legislative direction was given full authority in the matter of issuing bonds. The organization of townships, the number, character, and duties of their various officers, are matters of legislative control; and it is not doubtful that officers appointed represent the municipality as fully as officers elected. When the legislature has declared how an officer is to be selected, and the officer is selected in accordance with that declaration, his acts, within the scope of the powers given him by the legislature, bind the municipality. But these special commissioners were not the only officers of the township whose acts gave currency to these bonds. If inquiry had been directed to the county and township records, the affidavit of the township assessor to the consent required would have been found; and on the face of the bonds it appears that the county clerk of the county has added his

official certificate to their validity, so that the acts of general, as well as of special, officers and agents of the township, are the foundation upon which rests the validity of these bonds. While it is true that the Act does not in terms say that these commissioners are to decide that all preliminary conditions have been complied with, yet such express direction and authority is seldom found in acts providing for the issuing of bonds. It is enough that full control in the matter is given to the officers named. In the case of *Oregon* v. *Jennings*, (1886), 119 U. S. 74, 92, the rule is thus stated by Mr. JUSTICE BLATCHFORD—

> Within the numerous decisions by this Court, on the subject, the supervisor and the town-clerk, they being named in the statute as the officers, to sign the bonds, and the corporate authorities to act for the town in issuing them to the company, were the persons intrusted with the duty of deciding, before issuing the bonds, whether the conditions determined at the election existed. If they have certified to that effect in the bonds, the town is estopped from asserting, as against a *bona fide* holder, that the conditions prescribed by the popular vote were not complied with.

Whatever may be the hardships of this particular case, to sustain the defenses pressed would go far towards destroying the market value of municipal securities. We see no error in the ruling of the Circuit Court, and its judgment is therefore affirmed.

FIELD, J., took no part in the decision of this case.

The cases collected in the following note are confined to the decisions of the United States Supreme Court, and relate only to the rights of *bona fide* holders of municipal bonds. It is a matter of common knowledge that the Supreme Court has always been exceedingly watchful of the interests of the innocent holder of municipal bonds, as contrasted with the State Courts who seem more favorably inclined toward the municipality. Yet it will be observed that the Federal courts, by reason of the multiplicity of cases, or perhaps from a gradual change of view, are less liberal to the investor in this class of securities, than formerly, and the earlier are more frequently, and more carefully distinguished from those of later date.

Who are bona fide holders?

One who purchases bonds in open market, supposing them to be valid, and having no notice to the contrary, will be deemed a *bona fide* holder: *Galveston, Houston and Henderson R. R. Co.* v. *Cowdrey* (1871), 11 Wall. (78 U. S) 459.

A holder of bonds of the City of Ottawa, knowing that they were issued to aid a manufacturing company in the development of the

water power of the City which was not a corporate purpose within the meaning of the Constitution of Illinois, is *not a bona fide holder*, and the bonds as to him are void: *City of Ottawa* v. *Carey* (1883), 108 U. S. 110.

Irregularities or defects that do not prejudice the rights of bona fide holders.

In general, when the bonds on their face import a compliance with the law under which they are issued, the purchaser is not bound to look further for evidence of a compliance with the conditions of the grant of power.

Knox County v. *Aspinwall et. al.* (1859), 21 How. (62 U. S.) 539, is the leading case. In that case it was held, that the failure of the sheriff to give notice of an election held for the purpose of determining upon the issue of bonds, could not prejudice the rights of a *bona fide* holder for value. The opinion of NELSON, J., rests upon the English case of "*The Royal British Bank* v. *Turquand* (1856), 6 Ellis & Bl. 327." This was an action upon a bond against the defendant as manager of a joint stock company. The defense was want of power under the deed of settlement or charter to give the bond. One of the clauses in the charter provided that the directors might borrow money on bonds in such sums as they should, from time to time, by a general resolution of the company, be authorized to borrow. The resolution passed was considered defective.

JERVIS, C. B., in delivering the judgment of the court, observed "We may now take it for granted that the dealings with these companies are not like dealing with other partnerships, and that the parties dealing with them are bound to read the statute and the deed of settlement. But they are not bound to do more. And the party here, on reading the deed of settlement, would find, not a prohibition from borrowing, but a permission to do so, on certain conditions. Finding that the authority might be made complete by a resolution, he would have a right to infer the fact of a resolution authorizing that which on the face of the document, appeared to be legitimately done."

Excess of issue over constitutional limitation of indebtedness.

In *Gelpcke* v. *Dubuque* (1864), 1 Wall. (68 U. S.) 175, it is held that the fact that the bonds were issued in an amount exceeding the constitutional limitation does not invalidate them in the hands of an innocent holder.—So in a suit brought by a *bona fide* holder for value to recover the amount of certain coupons of township bonds, it cannot be shown, as a defence to a recovery, that at the time of voting and issuing the series of bonds, the value of the taxable property of the township was not in amount sufficient to authorize the voting and issuing the whole series according to the State act which authorized their issue, where there is a recital in the bonds that the requirements of such act have been complied with: *Marcy* v. *Oswego Twp.* (1876), 92 U. S. 637, also *Humboldt Twp.* v. *Long* (1876), Id. 642 (MILLER, J., dissenting).

Irregularities in Election.

Where the County Court called the election instead of the sheriff as required by law, and all subsequent proceedings were regular,

held, that this irregularity did not invalidate bonds in the hands of *bona fide* holders: *Marshall Co. Board of Supervisors* v. *Schenck* (1867), 5 Wall. (72 U. S). 772.

Notice of defects.

Where the bonds of the municipality had been issued pursuant to a *mandamus* to a railroad company, and subsequently the city obtained an injunction and order of the Court requiring the railroad company to deposit the bonds with a receiver, it was held, that, notwithstanding the pendency of said actions and the judgments and orders therein, the *prima facie* presumption, that the purchaser acquired the bonds without notice of defects in the inception of the instruments, was not overcome: *City of Lexington* v. *Butler* (1872), 14 Wall. (81 U. S.) 282.

A judgment of the Supreme Court of the State of New York in an action by the State against the town of Thompson, by which the bonds of the town were declared null and void, could not affect a *bona fide* purchaser for value of the bonds, who had no knowledge of the action: *Thompson* v. *Perrine* (1881), 103 U. S. 806.

Estopped by recitals.

In the case of *Lynde* v. *Winnebago County* (1873), 16 Wall. (83 U. S.) 6, the majority of the Court (CHASE, MILLER and FIELD, JJ., dissenting), held that where the County Judge was authorized by popular vote *to levy a tax* for the purpose of constructing a court house, to be extended over a period of not more than ten years, the power to borrow money and issue bonds therefor was implied; and the requisite popular sanction being set forth upon their face, and the judge being authorized to decide whether such sanction had been given, the county is estopped from denying the validity of the bonds in the hands of *bona fide* holders.

When the bonds of the City of Ottawa, contained recitals of the titles of ordinances under which they were issued which, in effect, assured the purchaser that they were for municipal purposes, with a previous sanction of a majority vote of the city; the city is estopped to say, as against a *bona fide* holder of the bonds, that they were not issued or used for a municipal or corporate purpose: *Hackett et al., Exr's.* v. *Ottawa* (1879), 99 U. S. 86.

In aid of Railways.

An *Act of the Legislature* of Texas provided that the City of Antonio might take stock of the San Antonio Railroad Company, and issue bonds to pay for the same. The subscription was made and bonds issued. The railroad was not built. *Held*, that the bonds were valid in the hands of a *bona fide* purchaser: *City of San Antonio* v. *Mehaffy* (1878), 96 U. S. 312.

So in County of *Daviess* v. *Huidekoper* (1879), 98 U. S. 113, it was held that the bonds of a county in Missouri are not void in the hands of a *bona fide* purchaser for value, because the railroad company, to which the bonds were issued in payment for its capital stock, was not created according to law, until subsequent to the favorable vote of the qualified voters, and the order of subscription.

Defects in Execution.

A town in Wisconsin issuing its bonds, is estopped, as against a *bona*

fide holder for value, to show that the true date of the bonds was different from that named in them, or that the town clerk, who was in office at the date of the bonds, in fact signed the bonds after he went out of office: *Weyauwega* v. *Ayling* (1879), 99 U. S. 112.

County bonds issued in Missouri by a *de facto* county court, and sealed with the seal of the Court, and signed by the *de facto* president, cannot be impeached in the hands of an innocent holder, by showing that the acting president was not *de jure* one of the justices of the Court: *Ralls Co.* v. *Douglass* (1882), 105 U. S. 728.

Defects and Irregularities that affect the rights of bona fide holders. Want of power.

Where, by authority of an Act of the Illinois Assembly providing that it shall be lawful for the agent of any corporate body "to subscribe to the capital stock of a railroad company," a County Supervisor subscribed for stock and issued certain bonds to a railroad company, as agent of the town, held, that the bonds were invalid, though in the hands of an innocent holder, for want of authority on the part of the municipal corporation to issue: *Township of East Oakland* v. *Skinner* (1877), 94 U. S. 255.

Where the charter of a Missouri railroad company authorized the taxable inhabitants of a "strip of country" to vote a tax in aid of the railroad company, and required the county court to levy and collect such tax, if voted, this gave no authority to the county to issue bonds, and bonds so issued are void though in the hands of a *bona fide* holder: *Ogden* v. *County of Daviess* (1881), 102 U. S. 634.

The City of Holly Springs subscribed for stock of a railroad company, and issued its bonds subsequent to a special election and a general ratification by the Legislature of previous subscriptions to stock; though not in violation of the Constitution, yet neither the election nor subscription was authorized by any Act of the Legislature, held, that the bonds were void in the hands of a *bona fide* holder for want of power to issue, and indefiniteness of ratifying Act: *Hayes* v. *Holly Springs* (1885), 114 U. S. 120.

Not estopped by recitals.

The Legislative journals of the State of Illinois did not contain the requisite evidence of the passage of the law under which the bonds of the town of South Ottawa were issued, held, that in the action to recover the amount due on the bonds, the town was not estopped to deny the existence of the law under which its bonds purport to have been issued. The fact that the holder was a *bona fide* purchaser does not affect their validity: *South Ottawa* v. *Perkins* (1876), 94 U. S. 260; *Buchanan* v. *Litchfield* (1880), 102 Id. 278.

Excess of constitutional limitation of indebtedness.

In the case of *Buchanan* v. *Litchfield* (*supra*), it was held, that, where the City of Litchfield issued its bonds to an amount in excess of the constitutional limitation of municipal indebtedness, in the absence of recitals in the bonds, representing on the part of the constituted authorities, that the constitutional requirements were met, the bonds were void though in the hands of a *bona fide* holder.

The case of *Dixon* v. *Field* (1884), 111 U. S. 83, goes a step further. It held that bonds in the hands of *bona fide* holders are void, when issued to an amount in excess of the constitutional limitation of indebtedness, even though the recitals in the bonds are that they are conformable to law. In this case is cited *Buchanan* v. *Litchfield* (*supra*), and *Northern National Bank* v. *Porter* (1884), 110 U. S. 608. The point is made that the municipality will be estopped to deny the validity of bonds issued by it, only when the officers are authorized to ascertain and determine the existence of the facts upon which the recitals as to their validity are based: (*Contra*) *Dallas Co.* v. *McKenzie* (1884), 110 U. S. 686.

When a county court issued the bonds of a county to an amount in excess of the amount fixed by the commissioners, and approved by the majority vote of the electors of the county, the bonds, to the extent of the excess, are invalid in the hands of an innocent holder, though the bonds contained a recital that they were issued according to law and the ordinance of the Court: *County of Daviess* v. *Dickinson* (1886), 117 U. S. 657.

Unconstitutionality.

Bonds in the hands of a *bona fide* holder, issued by authority of an Act of the Legislature of West Virginia, authorizing the City of Parkersburg to loan the bonds to persons engaged in manufacturing, are void, by reason of the unconstitutionality of the Act: *City of Parkersburg* v. *Brown et al.* (1883), 106 U. S. 487.

A curative statute enacted by a Legislature having no constitutional authority to grant the new power, except on a two-thirds vote of the city, will not make good the bonds of the city in the hands of a *bona fide* holder, if such vote has not been obtained: *Katzenberger* v. *City of Aberdeen* (1887), 121 U. S. 172.

Defects in Execution.

When the law provides that a statute authorizing the issue of municipal bonds should not take effect until after its publication in a certain paper, and further that no bonds be issued under its authority until the question of their issue had been decided by popular vote upon thirty days notice, a bond which upon its face refers to the act, and shows that the notice of election was given before the act went into effect, is void, even in the hands of an innocent purchaser. *McClure* v. *Oxford Twp.* (1877), 94 U. S. 429.

When an act of the General Assembly of Missouri, passed March 30th 1872, provided that any bonds thereafter issued should be registered with the State Auditor, held, that bonds actually issued in October, 1872, but antedated as of March 28th 1872, and not registered with the State Auditor, were invalid in the hands of an innocent holder: *Anthony* v. *County of Jasper* (1880), 101 U. S. 693.

Where an examination of the records would have shown that the bonds were not issued on the day recited as their date, and that the person who signed them was not the Mayor at the time they were signed, the facts that the records would show that the person signing them was Mayor on the day of their date, and that the statutes and ordinances referred to in the bonds authorized their issue, and that the

indorsements showed they had been registered, will not aid the purchaser, as even *bona fide holders* of municipal bonds, must take the risk of the official character of those who executed them: *Cole* v. *City of Cleburne* (1889), 131 U. S. 162.

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MUNICIPAL BONDS have also been the subject of leading articles and annotations in THE AMERICAN LAW REGISTER, wherein the subject has been more generally treated, viz:—

RAILROAD AID BONDS in the Supreme Court of the United States, by James F. Mister, of Kansas City, Missouri; a leading article discussing the decisions of the Supreme Court of Missouri and their misconception by the Supreme Court of the United States: vol. 17, page 209.

CONSTRUCTION OF STATUTORY POWERS IN BOND CASES IN THE SUPREME COURT OF THE UNITED STATES, by the same author; a leading article continuing the same subject, and discussing the doctrine of the Supreme Court of the United States as unwarranted and subversive of the law of powers applicable to cases of special agency, and as an unwarrantable application of the law of estoppel: vol. 17, page 609.

THE AUTHORITY AND STEPS TOWARDS THE ISSUANCE OF MUNICIPAL BONDS, by Adelbert Hamilton, of Chicago; an annotation to the case of *Rouede* v. *The Mayor of Jersey City* (1884), in the U. S. Circ. Ct., N. Dist. N. J., which was a case of a *bona fide* holder of such a bond: vol. 23, page 306.

ON MUNICIPAL SUBSCRIPTIONS TO THE STOCK OF RAILROAD COMPANIES; a leading article discussing, in 1853, the opinion of the Supreme Court of Pennsylvania in the case of *Sharpless et al.* v. *The Mayor* (1852), 21 Pa. 147; S. C. 2 AMERICAN LAW REGISTER (O. S.) 27, 85, where the right of a municipality to subscribe for railroad bonds was sustained: vol. 2, (O. S.) page 1.